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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Parts 73 and 74)
of the Commission's Rules To)
Permit Certain Minor Changes In Broadcast)
Facilities Without a Construction Permit)

MM Docket No. 96-58

MAY 16 1996

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

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I. INTRODUCTION AND SUMMARY

In these comments the National Association of Broadcasters ("NAB")¹ lends its initial and conditional support to the bulk of the proposals embodied in the Commission's *Notice of Proposed Rule Making* ("Notice")² in the above-captioned rulemaking proceeding. Here the Commission seeks public comment on a variety of proposals. The common thread throughout the Commission's *Notice* is the elimination of the present requirement for the filing for – and FCC grant of – a "construction permit" for "minor" changed facilities.

Making such a rule making possible is the change to Section 319 (d) of the Communications Act³ – one of the many statutory amendments contained in the

¹ NAB is a nonprofit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

² *Notice of Proposed Rule Making* in MM Docket No. 96-58, FCC 96-118, adopted March 19, 1996, released March 22, 1996.

³ 47 U.S.C. § 319 (d).

Telecommunications Act of 1996.⁴ Here the Congress altered the relevant statutory law to afford the FCC the discretion to adopt rules allowing minor changes in existing facilities without a construction permit.

NAB supports these and other concepts that will expedite the provision of modified and improved facilities to existing broadcasters. However, and consistent with NAB's traditional position on such issues, we believe it is essential that any such alterations in Commission policy not result in an increase in unwarranted interference to other stations' service or to the broadcast medium as a whole.

On balance, we believe the bulk of the Commission's proposals will achieve needed streamlining without jeopardizing the medium or individual stations with unwarranted interference. However, NAB believes the Commission must be vigilant, as it implements its new rules and procedures, to ensure that new interference is not a product of reduced paperwork, processing and review. One part of this would be assuring that other potential affected broadcasters are given adequate notice of such proposed minor changes, and be given the opportunity to express their views prior to the Commission's issuance of a license to cover such changes. Additionally, and as developed further in these comments, we urge the Commission to adopt rule and policy changes in this proceeding that will give special consideration to the needs of AM stations (when new or modified communications facilities are planned in the vicinity of an AM broadcaster) and TV Channel 6 licensees (when new or modified noncommercial FM facilities are proposed for operation within the service area of the Channel 6 station).

⁴ Pub. L. No. 104-104, 110 Stat. 56 (1996).

Finally, NAB reserves final comment on these proposals until it has had the opportunity to review the submissions of individual broadcasters and other interested parties. Moreover, NAB urges the Commission to conduct annual reviews – one year and two years following its adoption of a final action in the instant proceeding – as to how these policies have operated. Such a review should focus on any complaints, of interference or non-compliance with the Commission’s technical or other substantive rules, which are based on the effects of minor change operations obtained under such a streamlined process.

II. PROCESSING/PROCEDURAL REFORMS MUST NOT THREATEN INTERFERENCE-FREE SERVICE OR NOTIONS OF DUE PROCESS

While NAB generally is supportive of FCC rule and policy changes that will expedite the provision of improvements in existing broadcast service, we condition such support on evidence that procedural or substantive reforms will not result in new and unwarranted interference to other broadcast operations. For example, in a related proceeding initiated this year – a proceeding dealing with “improvements in the FCC’s processes,”⁵ -- NAB urged the Commission *not* to substitute thorough Commission review for a policy of applicant “self-certification” where technical/interference matters are concerned.⁶

Similarly, in the instant proceeding we believe these concerns over increased interference should be a primary concern. Fortunately, the Commission seems to have these concerns in mind as well.

⁵ Notice of Inquiry in PP Docket No. 96-17, FCC 96-50, adopted February 8, 1996, released February 14, 1996.

⁶ *See Comments of NAB* in PP Docket No. 96-17, filed March 15, 1996, at 3-5.

In proposing the extent to which it will exercise its new statutory authority to dispense with the need for the filing of a construction permit,⁷ the Commission has designated the kinds of situations where it will – and will not – eliminate the need for a permit. Here the agency appears to be employing, as a primary criterion for review, the extent to which such reforms might result in untoward interference or other related injury to other broadcasters or to the medium itself.

NAB applauds the Commission's recognition of these interference concerns and believes the FCC has exercised good judgment in proposing selective implementation of its new statutory authority. However, and as mentioned above, NAB's initial support of the Commission's general plan is conditioned on a review of what other parties may submit in this initial round of comments. Moreover, we again urge the Commission to conduct annual reviews – one year and two years following its adoption of new rules in this proceeding – that will assess the extent to which, if any, these streamlining reforms have resulted in new interference or other adverse consequences meriting agency revision to these modified rules and processes.

As another safeguard, NAB recommends that the Commission consider adopting, as part of the rules to be developed in the instant proceeding, a requirement that the party seeking the minor change afford notice to all potentially affected broadcasters.⁸ Absent

⁷ NAB acknowledges and concurs with the Commission's determination (at ¶27 of the *Notice*) that the elimination of the need for the filing of a construction permit will, for those situations, also eliminate the need for the filing of a regulatory fee.

⁸ For example, in the case of FM broadcasting, the FM broadcast parties "potentially affected" might be those co-channel and first, second and third adjacent channel stations operating within 300 kilometers of the proposed changed facility. Where noncommercial FM stations are concerned, Channel 6 stations also would be given service, consistent with the system already developed for protection of these television stations.

any comments promptly filed in opposition to the proposed change, the modified facilities could be employed. In this fashion, the Commission better would ensure that expedited provision of service will not compromise Commission standards of interference-free service.

Furthermore, and as addressed below, we urge special FCC attention to the interests of AM radio and TV Channel 6 broadcasters who experience new or modified facilities in their vicinities and service areas. By taking these additional actions, the Commission better will ensure that the reforms being developed in this proceeding will achieve the agency's twin goals of: (1) expedited provision of service; and (2) avoiding interference and other adverse consequences of such regulatory change.

III. EXISTING AM BROADCAST STATIONS SHOULD OBTAIN ADDITIONAL TECHNICAL PROTECTION FROM "NEWCOMERS"

NAB enthusiastically supports the Commission's proposal to codify its existing policy of requiring newcomer broadcast facilities near AM stations to correct any disturbances that their new facilities cause to the existing AM patterns. Nevertheless, we believe that existing AM broadcasters would be served even better if a modest alteration were made to the text proposed for this section.

Section 73.1692 of the Commission's Rules clearly should place on the licensee or permittee of a new or modified facility the responsibility for covering *all* of the costs associated with determining the impact of the new or modified facility on a nearby AM station.⁹ That is, any licensee or permittee proposing to build or modify facilities that are

⁹ NAB notes that the rules proposed in this proceeding to protect AM facilities from the effects of "newcomers" vary, in terms of the radii of protected areas, from the rules adopted recently in Part 22 of the Rules (47 C.F.R. § 22.371). These Part 22 regulations afford protection to AM stations from pattern

in close proximity to an AM station should be financially responsible for both the *before* and the *after* measurements that have to be made on the AM station's facility to determine what impact, if any, the new or modified facility has on the AM station. NAB encourages the Commission to incorporate this idea into its new Section 73.1692 by revising the opening paragraph of that provision to read as follows:

"Where a broadcast licensee or permittee proposes to mount a broadcast antenna on an AM station tower, or where construction is proposed within 0.8 km of an AM nondirectional tower or within 3.2 km of an AM directional station, the broadcast licensee or permittee is responsible for ensuring that the construction does not adversely affect the AM station. This means that the broadcast licensee or permittee is financially responsible for all measurements that are necessary to determine the impact on the AM station of the new construction, and for installing and maintaining any detuning apparatus necessary to restore the AM station's pattern."

By making this change in this rule provision, the Commission will afford needed benefits to those AM facilities that often are the innocent "cost victims" of the introduction of new or modified broadcast facilities in their near vicinity.

disruption effects of public mobile service base stations. We urge the Commission to conform its rules in Part 73 with those in Part 22, with the agency choosing the mileage standard affording the greater protection to AM facilities.

IV. SPECIAL CARE MUST BE TAKEN IN THE AREA OF NONCOMMERCIAL FM INTERFERENCE TO TV CHANNEL 6

In 1984, following several years of intense deliberations and engineering and policy analysis, the Commission adopted rules designed to afford television Channel 6 licensees protection from the interference created by noncommercial FM stations.¹⁰ As such, NAB believes the Commission should take special care in adopting rule changes having a bearing on the Channel 6/noncommercial FM station relationship.

NAB has reviewed the section of the *Notice* dealing with the protection of Channel 6 television stations. On balance, it appears that the Commission has proposed steps that will not further threaten viewers' reception of Channel 6 television stations. However, NAB will be reviewing the entirety of initial comments in this proceeding and will reassess this position, if necessary, based on the comments provided by other interested parties, including licensees of Channel 6 television broadcast stations. Moreover, and as discussed earlier, we urge the Commission to consider noncommercial interference to Channel 6 television stations as one of the chief areas of focus in FCC review of the consequences of rule and policy changes to be adopted in the instant proceeding.

¹⁰ See, e.g., *Third Report and Order* in Docket No. 20735, 49 Fed. Reg. 45146 (November 15, 1984); recons. granted in part, *Memorandum Opinion and Order* in Docket No. 20735, 50 Fed. Reg. 27963 (July 9, 1985).


V. CONCLUSION

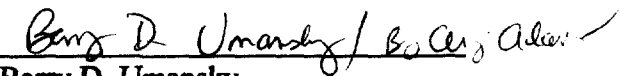
For the reasons stated herein, NAB supports FCC rule and policy changes that responsibly will implement the new discretion given the Commission to dispense with the need for a construction permit for *some* minor changes to existing broadcast facilities. By taking these actions – coupled with appropriate notification requirements and the Commission's periodic, global review of the effects of its regulatory reforms here – the Commission will expedite the use of changed facilities without endangering interference-free broadcast service.


Respectfully submitted,

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